

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARK D. MARSHALL,

Plaintiff,

v.

WILLIAM HOLM,

Defendant.

ORDER

08-cv-398-bbc

Plaintiff Mark D. Marshall filed this lawsuit while he was in prison, alleging that defendant William Holm used excessive force against him in violation of the Eighth Amendment. On April 20, 2009, defendant filed a motion for summary judgment, contending that the amount of force he used was restrained and appropriate to prevent plaintiff from engaging in further acts of self harm. Plaintiff was given until May 22, 2009 to file a response. He did not respond.

This is not the first time plaintiff has demonstrated a lack of interest in pursuing his lawsuit. On December 29, 2008, plaintiff filed a motion for interrogatories that was blank. Dkt. #17. Defendant's counsel responded to plaintiff that it would not respond unless instructed to do so. Dkt. #18. Plaintiff did not file an additional request for interrogatories.

Also, on March 16, 2009, plaintiff failed to appear for a scheduled deposition. Defendant's counsel sent a letter to plaintiff at his last-known address about his absence at the deposition and asking him to contact defendant's counsel to reschedule. Dkt. #19. Plaintiff did not respond to the letter.

Because plaintiff has failed to respond to defendants' motion for summary judgment or communicate with the court in any other way since December 29, 2008, it appears that plaintiff is no longer interested in prosecuting this case. In these circumstances, rather than turn straight to the merits of defendants' unopposed motion for summary judgment, it is proper to decide first whether plaintiff wishes to even proceed in this case. Therefore, I will grant plaintiff a short time in which to show cause why this case should not be dismissed with prejudice for his failure to prosecute. If plaintiff fails to respond within the time allowed, this case will be closed.

ORDER

IT IS ORDERED that plaintiff shall show cause no later than June 15, 2009, why this case should not be dismissed with prejudice for lack of prosecution. If plaintiff does not respond by June 15, 2009, the clerk of court is directed to enter judgment in favor of

defendants dismissing this case with prejudice pursuant to Fed. R. Civ. P. 41(b) for plaintiff's failure to prosecute.

Entered this 5th day of June, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge